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ABSTRACT

This paper reflects an attempt to chronicle the events, articles, and hearings which concerned the application of behavior technology in adult prison systems between January 1, 1973 and November 1, 1974. The events of this time period are viewed by the author as demanding the attention of behavior therapists, legislators, correctional officials, attorneys, and, of course, the subject (or object) prisoners themselves. This document reports briefly on the efforts of behavior modifiers who have studied prison systems and attempted to develop conditioning technologies for those whose past rehabilitative efforts have been reported to "have had no appreciable effect on recidivism." (Author/PC)

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BEHAVIOR THERAPY IN PRISONS:
Walden II or Clockwork Orange?

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Paper prepared for the Eighth Annual Convention of the Association for Advancement of Behavior Therapy, Chicago, November 1-3, 1974, as part of a panel entitled "Legal and Ethical Issues in Behavior Therapy."

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* A Project description is attached at the end of this paper.

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BEHAVIOR THERAPY IN PRISONS: Walden II or Clockwork Orange?

Arpiar G. Saunders, Jr.

This paper reflects an attempt to chronicle the events, articles and hearings which have concerned the application of behavior technology in adult prison systems within the past twenty-two months.[1/] The events of the past twenty-two months demand the attention of behavior therapists, legislators, correctional officials, attorneys and of course, the subject (or object) prisoners themselves. Behavior modifiers studied and attempted to develop conditioning technologies for prison systems whose past rehabilitative efforts have been reported to "have had no appreciable affect on recidivism." (Martinson, 1974) (See No. 27, infra.).

Michael A. Milan,[2/] who with John M. McKee, and the Rehabilitation Research Foundation had probably the most extensive experience attempting to apply the principles of behavior modification to an adult prison system

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1/ January 1, 1973 was selected for a starting point for two reasons, first it generally appears to mark the beginning of wide debate on the subject and second, the National Prison Project began to receive a large number of prisoner request for assistance which involved behavior modification programs around that date.

2/ Michael Milan was called by the Federal Bureau of Prisons as an expert witness to testify in support of the START behavior modification program at an in-court evidentiary hearing. Dr. Milan was cross-examined by the author. A study of the transcript of this testimony will reveal that Milan's testimony was of far more assistance to the prisoner challengers of the program than to the government. Other expert witnesses testifying for the government in the START litigation were Drs. Herbert Quay, Walter Menninger. Drs. Roger Ulrich, Stephen Fox and Richard Korn testified for the prisoners at the same hearings.

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(Milan and McKee, 1973) (See No. 10, infra) explains the failures as follows:

> "The prisons could not be any better designed to produce criminals than they are now. It's a beautiful system. It's like Nate Azrin and Harold Cohen and all those guys—if we all got together and said, 'Let us design the best possible system to breed crime, antisocial behavior, and maladaptive tendencies'—it's like we all got together and did it, rather than it just evolving and happening by chance.
>
> "The system is magnificent! They do everything backward! They do everything they can to breed hostility. They *force* the offender to acquire new antisocial skills. What do they do? There are so many things, where do you begin? The man comes into the institution, and *every* potential backup reinforcer available is bestowed upon him. Everything! All the visiting privileges; he knows when he's expected to get out; mailing privileges; telephone privileges. Everything is given to him. And what happens? You give everything freely when the man comes into the system, you have only one kind of control procedure left. And that is to take things away. He fouls up? Well, we'll take away some good time. We'll restrict this privilege, restrict that privilege. That's a punishment model. The only reason people do anything is punishment."
>
> In addition, he says, even the pure punishment model is maddeningly inconsistent. "There are no established criteria, so you're always in a state of flux. The officer who smiled at you when you did something yesterday is just as likely to write a disciplinary report when you do the *same thing* today. Who knows why? There is no way to predict when these bad things are going to happen. That breeds a lot of frustration. Some people can be written up for virtually nothing, and others can do virtually anything and not experience any consequences!"

Quoted in Philip J. Hilts, Behavior Mod, Harper's Magazine Press, (1974) (p.114-115) (Emphasis on original).

The adult prison system presents both a challenge and an opportunity for behavior therapy. The issue, involving ethics and law, is whether the challenge is an appropriate one to accept, and if so, what further study and evaluation of

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of penal institutions, of the political and moral expectations of society with regard to the criminal justice system, of the prisoners, and of the principles and application of behavior therapy is required before a behavior therapist and his program are locked behind the walls of an American prison. The materials listed in this paper, it is suggested, contain the necessary information, ideas and analysis for intelligent discussions of that challenge. Such discussions must involve behavior modifiers, legislative bodies, the potential client-employer (correctional systems and prisoners) and legal representatives of all interested parties.

The Association is now faced with this challenge. It is urged that dialogue concerning ethics, law and behavior modification within America's prisons be made a primary purpose of the Association in the year ahead. Philip J. Hilts has made his position clear:

> "Prisons could be made more foolish, brutal and rigid than they are now if the behavior-mod is installed without reforms to the whole punitive Them-Us approach. If we go back to the behavioral analysis of prisons, the pure theory, the first question was: What do you want? Well, we know what the prison people want. If anything is going to be modified, perhaps it should be that."
>
> Hilts, supra, at 128.

It can be stated that his view is more than shared by prisoners. The confrontation between behavior therapy and law concerning penal behavior modification efforts, if allowed to continue, will result in court-imposed resolution of these issues. Confrontation can be avoided by informed and open discussion, accompanied by responsiveness by each to the other's concerns.

The chronology which follows covers the developments of the past 22 months, both in events and materials, in the controversy over the application of behavior therapy in prisons, and it reflects in its selection the author's own experience and involvement with such developments. It does not purport to

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represent an exhaustive analysis. Rather, it is hoped that the reader will carefully review the list and while doing so, will find it useful to read the short discussion paragraphs as guideposts to those materials or events which appear to be of most interest.

1. December 1972: Note: Conditioning And Other Technologies Used to "Treat?" "Rehabilitate?" "Demolish?" Prisoners and Mental Patients, 45 S. Cal. L. Rev. 616 (1972).

The Note describes several behavior control techniques including psychotherapy, drug therapy, behavior modification, including aversion therapy, and psychosurgery, with examples of application within prisons or mental health institutions, and considers whether prisoners and mental health patients have rights to and against their use. Particular effort is taken to show the conflict between "the possible rights to and against treatment, representing competing values of freedom from confinement through treatment and return to the community, and freedom from forcible psychic intervention through treatment."

2. January 1973: The National Advisory Commission on Criminal Justice Standards and Goals issued its Report on Corrections. The Commission, funded by the Law Enforcement Assistance Administration in 1971, was to formulate for the first time national justice standards and goals for crime reduction and presentation at the state and local levels.

The Tast Force on Corrections issued several Standards including Standard 11.3: "Social Environment of Institutions." This Standard

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and more importantly, the Commentary accompanying the standard, reveal an awareness of the fact that correctional institutions "are ruled by punitive laws, operated in agencies organized to carry out punishment, and perform their functions in ways that reinforce punitive attitudes." The Task Force evidences extreme concern with the effects of institutionalization upon prisoners incarcerated within such punitive environments. Behavior therapy is suggested, not for the prisoners per se, but rather as part of a total to change the punitive environment. However, as Milan and McKee have shown, such a task has been attempted without success. See No. 10, infra.

It is recommended that the entire Task Force Report and its Standards be reviewed. The Report may be purchased from the U.S. Government Printing Office.

3. February 21, 1973: In response to prisoner requests for assistance, the National Prison Project made its first visit to the now well-known Federal Bureau of Prisons' behavior modification program, START. START, using conditioning principles attempted:

> .....to make passive, nonassertive, depersonalized inmates of the total institution, to shape the institutional neurosis described in Goffman's Asylums. From this point of view, it was a special treatment program for the few who had managed to maintain their individuality, leadership, self-interest, and independence often felt to be important behaviors outside of institutions but somehow intolerable within their walls. At best, the aim of the program was adjustment -- adjustment to the peculiar world of prisons; at worst, the program was exploitative. The passive prisoner who responds immediately to requests or even suggestions, who never talks back, and of course, never organizes other prisoners, is the kind of prisoner who would make the work-a-day life of the guard simpler, safer, and more comfortable.
>
> (Holland, 1974, p. 14) (See No. 25, infra).

As a result of the visit, the following letter was sent:

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February 26, 1973

Dr. Pasquale J. Ciccone
Director
U.S. Medical Center
Springfield, Missouri 65802

Dear Dr. Ciccone:

In my recent visit to the Medical Center I was shocked to learn that two of the fifteen involuntary participants in the START program--Gerard Wilson, #19481-175 and Alvin Gagne, #29527-138 were shackled by their arms and legs by means of leather and metal straps and chains to their steel beds. Additionally, I learned that on several occasions in the five days they had been shackled (as of February 21st), they had been forced to eat with both hands still shackled to the bed and had experienced great difficulty in receiving staff assistance in removing the chains in order to perform necessary bodily functions. These conditions were particularly disturbing in light of the Federal Bureau of Prisons policy statement which had seemingly outlawed such cruel and inhuman punishment.

Even more outrageous is the fact that neither individual was ever charged with or made an appearance before a disciplinary committee for violation of a rule or regulation. It appears that these two individuals were and continue to be subjected to cruel and arbitrary punishment.

In addition to the two individuals noted above, four other individuals--Albert Duetschman, #26329-136, William Ruiz, #2149-135, Edward Sanchez, #18827-175, and Thomas Sparks have also been subjected to cruel and arbitrary treatment allegedly because of their non-cooperative attitude within the involuntary START program. These individuals have been and continue to be subjected to conditions of segregation that can be termed only as punitive. Without notice or a due process hearing these individuals have been denied many of their legal rights and privileges, including but not limited to a shower twice weekly, recreation twice weekly, correspondence rights, reading materials, writing materials, religious materials including a Bible, commissary privileges as well as a denial of any personal property.

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Continuation of letter to Pasquale J. Ciccone:

The punitive treatment that these six individuals have been and continue to be subjected to by your staff forces me to believe that the START program is but a medical sham, with the true objective of subjecting certain selected individuals to an experimental program which is simply cruel and unusual punishment inflicted on these individuals for their past behavior without regard to Federal Bureau of Prisons policies concerned with inmate discipline or the conditions, rules and regulations of segregation grade custody.

I must ask you to immediately comply with the opinion of February 21, 1973 by your own expert, Dr. Quay, that Mr. Duetschman plainly did not meet the established selection requirements for the START program because of his mental and physical condition. His transfer to an appropriate unit perhaps within the Medical Center, should be effected at once.

I look forward to your prompt responsive reply.

Sincerely,

Arpiar G. Saunders, Jr.
Staff Attorney

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4. March 1973: Bruno Cormeir, M.D., The Practice of Psychiatry In the Prison Society, a paper presented at the meeting of the American Academy of Psychiatry and the Law, Atlanta, Georgia, March 1973. Dr. Cormeir is a member of the Department of Psychiatry, McGill University.

Cormeir notes that physicans and psychiatrists attached to certain prisons recognized before psyhciatrists working in mental hospitals that syndromes and symptoms displayed by prisoner-patients were related to the prison environment. This finding resulted in a recognization that the behavior that gave rise to the criminality would not necessarily give rise to behavior displayed within the institution.

5. March 1973: David Wexler, Token and Taboo: Behavior Modification, Token Economies, and the Law, 61 Cal. L. Rev. 81 (1973).

Wexler deals with the issue of the definition of legally acceptable reinforcers and the resulting limitation on psychologically effective reinforcers in token programs within mental health facilities. In addition, the article contains a good analysis of the impact of Wyatt v. U.S. Stickney, 344 F.Supp. 373 (M.D. Ala. 1972) and the resulting development that institutional patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. The article favors George Fairweather's (Fairweather 1964) emphasis on the development of confidence and decision making ability rather than the performance of assignments emphasis of token economies.

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6. May 8, 1973: Senator Samuel J. Ervin, Jr. (D.N.C.), "Federal Funding For Behavior Modification," remarks in May 8, 1973 Congressional Record at S 8515-8518. Senator Ervin expresses concern that prisoners' "rights to privacy and freedom of individual thought" are protected in certain federally funded programs including those which involve "operant conditioning (reward/punishment theory)", and stresses that Congress "maintain oversight in such programs." (See No. 19, infra).

7. July 10, 1973: Kaimowitz and Doe v. Department of Mental Health for State of Michigan, C.A. 73-19434-AW (Cir. Court for the City of Wayne, Michigan, July 10, 1973), a decision concerned with proposed experimental psychosurgery for an institutionalized patient who had signed an "informed consent form."

The Court's examination of the various features of the experimental program such as its intrusiveness and its dangerousness and the issue of informed consent in the setting of a total institution, provide instructive guidance for the possible application of behavior therapy within total institutions. This case should be carefully analysized. The right to privacy, as recognized in Kaimowitz, may regulate the application of behavioral procedures in prisons.

> There is no privacy more deserving of constitutional protection than that of one's mind...
>
> Intrustion into one's intellect, when one is involuntarily detained and subject to the control of institutional authorities, is an intrustion into one's constitutionally protected right of privacy. If one is not protected in his thoughts, behavior, personality and identity, then the right of privacy becomes meaningless.
> . . . . . .
>
> .....In the hierarchy of values it is more important to protect one's mental processes than to protect even the privacy of the marital bed. Kaimowitz at 38-39.

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8. July, 1973: The following questions of law were agreed by all parties to be in issue in the lawsuit brought by the prisoner-subjects of the START behavior modification program. The scope of the agreed to issues reveals the legal issues that can be raised in the application of behavior therapy within prisons, including the authority of prison administrations to attempt the formal modification of behavior of prisoners incarcerated within their institutions.

I. Whether, in the absence of notice, charges and hearing, the selection and forceable transfer of a prisoner into START violates the Constitutional rights of the prisoner in denying him due process and equal protection of the law.

II. Whether a prisoner selected to participate in the START program has a right to freely withdraw at any time without penalty of any kind and to be transferred from the program.

III. Whether START violates any of the following federally protected constitutional rights:

a. Freedom of speech and association.

b. Freedom of religion.

c. Freedom from unwarranted search and seizure.

d. Freedom from invasions of privacy.

IV. Whether the imposition upon a prisoner of an untested, novel and unvoluntary behavioral modification program constitutes an abuse of the Bureau of Prisons' discretion to provide for the proper government, discipline, treatment, care rehabilitation and reformation of all persons committed to its custody, in accordance with Title 18, United States Code.

V. Whether the imposition upon a prisoner of an untested, novel,

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groin area." Coverent sensitization involves the use of hypnosis to "create a phobia about children as sexual objects." (Quotes are from a program description prepared by the program managers.)

10. October, 1973: Prepublication draft of Behavior Modification Principles and Application in Corrections by Michael A. Milan and John M. McKee, a chapter to appear in D. Glaser (Ed.) Handbook of Criminology, Chicago Rand McNally, 1974, (in press).

Milan's and McKee's application of conditioning technology within certain Alabama prisons upon both prisoners and guards has been widely quoted as examples of the efficacy of behavior modification within prisons. However, both men are quoted by Hilts in Behavior Mod, supra, as acknowledging that the punishment model, which dominates correctional institutions, particularly in their efforts with institutional staff, was too thoroughly entrenched to allow positive reinforcement techniques to succeed. (Id. p. 125-127). With regard to their token economy application for prisoners, "after a change of wardens and some other problems" McKee and his staff left. Not long afterward, the prison was "back to normal" with Hilts quoting Milan "It was as if we had never been there...." (Id. p. 125).

The consequences of political realities of correctional institutions demand more analysis and understanding by behavior therapists before behavior therapy is attempted within a prison environment. Of even more importance, a fifteen month follow-up comparing the post-releases from the token system with that of two groups who had received two different types of vocational training, revealed that the three groups did not differ in recidivism. (RRF, 1973). The overall failure rate

reported of 49% would be consistent with the hypothesis that the within-prison treatment programs have little effect on recidivism. (Martinson, 1974) (See No. 27, infra.)

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11. November, 1973: Leslie T. Wilkins, Directions For Corrections, a paper presented to the American Philosophical Society, Autumn meeting, November 1973. Dr. Wilkins is a professor at the School of Criminology, SUNY at Albany.

Wilkins' thoughtful paper expresses the view that the criminal justice system is concerned with matters of guilt, human rights, and the concept of responsibility, "in short, moral, not medical and not technological questions." Citing "research findings [that] tend to show that the l it is found necessary to interfere with the personal autonomy of the offender, the better are his chances for going straight in the future," he advocates that prisoners be seen as persons with autonomy and treated humanely (p. 12-13). In addition, he notes that the "treatment perspective provides an excuse for many inequitable measures and even abuses of power" by prisoner administrators (p.30).

12. December 3, 1973: Clay Steinman, "The Case of the Frightened Convict," The Nation, December 3, 1973, p. 590-593.

This article reveals the resulting correctional response to one of the prisoners who elected not to cooperate with the involuntary START program. The perceptions of the prisoner provide useful insight into the actual operation of START.

13. December 5, 1973: Knecht v. Gillman, 488 F.2d 1136 (8th Cir. 1973).

In Knecht, two prisoners of the Iowa Security Medical Facility (ISM

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sought to enjoin the use of apomorphine on non-consenting residents. Apomorphine was used as part of an "aversive conditioning program" for prisoners with behavioral problems. Under the program at ISMF, "the drug could be injected for such behavior as not getting up, for giving cigarettes against orders, for talking, for swearing or for lying" Knecht at 1137. The prisoners at the facility who might be "treated" under this program included: residents from any institution under the jurisdiction of the Department of Social Services; persons found to be mentally incompetent to stand trial; referrals by the court for psychological diagnosis and recommendations as part of the pretrial or presentence procedure; and mentally ill prisoners. Knecht at 1138.

Knecht found such administration of apomorphine, absent informed consent, to be cruel and unusual punishment. The court refused to accept defendants' assertions that the provision of apomoprhine as part of "treatment" exempted it from Eighth Amendment consideration, noting that "the mere characterization of an act as 'treatment' does not insulate it from Eighth Amendment scrutiny." Id. at p. 1139. The court then concluded that:

> "Whether it is called 'aversive stimuli' or punishment, the act of forcing someone to vomit for a fifteen minute period for committing some minor breach of the rules can only be regarded as cruel and unusual unless the treatment is being administered to a patient who knowingly and intelligently has consented to it. To hold otherwise would be to ignore what each of us has learned from sad experience-- that vomiting (especially in the presence of others) is a painful and debilitating experience. The use of this unproven drug for this purpose on an involuntary basis, is, in our opinion, cruel and unusual punishment prohibited by the Eighth Amendment." Id. at 1139.

To end this unconstitutional practice, the court adopted procedures

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to insure a valid, informed consent. (The above summary of Knecht comes from materal written by the Mental Health Law Project, Washington, D.C

14. December, 1973: Conference on Behavior Control In Total Institutions, New York City, conducted by the Institute of Society, Ethics and Life Sciences, Hastings-on-Hudson, New York.

An informative summary of the three day conference is available from the Institute. Many of the questions and issues involving total institutions and behavior modification were discussed including problems of consent; the distinctions between experimental, punitive and therapeutic; the conflict between therapy and social control; between therapy and social engineering; and the issue of autonomy.

15. January, 1974: The three court-appointed psychologists filed their reviews of the START program.

> Two of these, Nathan Azrin and William DeRisi, agreed that the START program was a technically correct application of behavior modification principles. In Azrin's terms, 'START does embody to a substantial degree virtually all of the major relevant principles of behavior modification...' The third court-appointed expert, Harold Cohen, gave a more negative evaluation. In part, he argued that the prisoners' objections and the subsequent court trials themselves reflected some failure to meet the criteria of behavior modification. He acknowledged, however, that in the START program, there is a 'reasonable amount of understanding with regard to some of the basic operant principles underlying the use of the behavior modification model.' (Holland, 1974, p.9) (See No. 25, infra.).

Holland's analysis of these reports concludes that START was technically sound in its design and hence cannot be discounted as idiosyncratic. Robert Kennedy's paper (Kennedy 1974) (See No. 39,

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infra.) also contains a review of these expert reports.

16. February 6, 1974: The Federal Bureau of Prisons announced the termination of the START program for "economic reasons" effective March 1, 1974.

17. February 14, 1974: The Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice announced the termination of federal funding for projects involving psychosurgery and "medical research."

On June 18, 1974 new guidelines (No. G 6060.1A) were issued by LEAA which prohibit funding psychosurgery and medical research. Those terms were defined as follows:

a. Psychosurgery. Any form of brain operation, or direct physical manipulation of the brain, for the relief of mental and psychological symptoms, usually involving irreversible destructive brain lesions, especially of the frontal lobes of the brain, and performed for the management of intractable psychotic symptoms or unmanageable violent behavior.

b. Medical Research. Those medical or surgical procedures on human beings involving: observation, systematic changes in conditions, accompanied by observation before, during and after these changes are made, and involving some degree of risk, however slight, and which is experimentally applied to the individual subject, not so much in his own interest as in the interest of humanity through the advance of medical science.

In addition, the June 14 guideline states with regard to behavior modification: "This guideline is not intended to cover those programs of behavior modification such as involve environmental changes or social interaction where no medical procedures are utilized."

18. February 26, 1974: The following letter appeared in the New York Times.

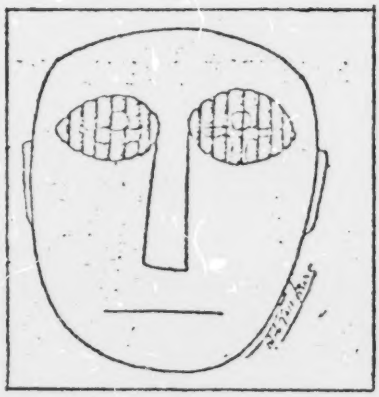
To Build Constructive Prison Environments

To the Editor:

Whatever the merits of the decision to withhold Federal support of behavior modification in prisons through the use of drugs, shock or emetic therapy, or psychosurgery, it was a tragic mistake to include behavior modification through management of the prison environment. One may remove drugs, shocks, emetics and scalpels from a prison, but not the environment, and, whether we like it or not, the behavior of prisoners will continue to be modified by the world in which they live.

Young offenders will learn new ways of breaking the law from their more experienced colleagues. Inmates will increase their contempt and disrespect for the enforcers of laws. Friendly contacts with other lawbreakers will be made. All this will continue unchecked if humane efforts to build more constructive environments are now frustrated.

It is possible for prisoners to discover positive reasons for behaving well rather than the negative reasons now in force, to acquire some of the behaviors which will give them a chance to lead more successful lives in the world to which they will return, to discover that the educational establishment has been wrong in branding them as unteachable and



for the first time to enjoy some sense of achievement. But that can only be brought about through positive action.

It is a gross misrepresentation of behavior modification through the design of contingencies of reinforcement to call it "systematic manipulation of behavior" or to say that "a reward is given at each stage at which a subject produces a specified behavior." Prisoners are being rewarded now, and their behavior is being systematically manipulated, and the result is Attica. It will continue to be Attica until the nature and the role of the prison environment are understood and changed.

B. F. SKINNER

Cambridge, Mass., Feb. 19, 1974

The writer is the author of "Beyond Freedom and Dignity."

19. February 27, 1974: An oversight hearing on Behavior Modification Programs in the Federal Bureau of Prisons was held before Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, 93d Cong., 2d Sess.

A printed transcript is available from the U.S. Government Printing Office (G.P.O.). In addition, also available from the G.P.O. is the above-noted Committee's January 1974 report of the observations and conclusions of their visit to the START behavior modification program at the Medical Center for Federal Prisoners, Springfield, Missouri.

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Both reports are recommended for their insight into the Federal Bureau of Prisons efforts to use (or deny the use) of behavior therapy with its system of over thirty institutions, incarcerating approximately 24,000 individuals. The efforts by the Federal Bureau of Prisons to utilize behavior modification principles probably exceed those of any state correctional system.

20. February 1974: The Behavior Law Center was established by the Institute for Behavioral Research "to strengthen communication and cooperation between behavioral scientists and the legal profession in seeking solutions for a broad spectrum of social problems." Its principle purposes are:

* To bring together lawyers and behavioral scientists in a joint effort to resolve legal and ethical questions arising from the implementation of behavioral programs in public institutions and community settings.

* To serve as a resource center for the legal and behavioral science issues involved in behavioral programs and techniques.

* To establish a forum wherein individuals from a variety of professionals cna participate in the cooperative design and development of programs intended to alleviate a wide range of social problems, including juvenile delinquency, the failure of the corrections system, treatment of the mentally ill, the abuse of drugs by youth and adults, and the care of the aged.

(These purposes obtained from material prepared by the B.L.C.)

The Behavior Law Center, 1225 19th Street, N.W., Washington, D.C. 20036, is planning a National Conference to be held in the spring of 1975, to serve the purpose of surfacing and discussing a broad range of issues and problems pertaining to the use of behavior modification procedures in certain total institutions, viz., mental hospitals, prisons,

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juvenile training schools and institutions for the retarded.

21. February, 1974: Michael H. Shapiro, Legislating the Control of Behavior Control: Autonomy and the Coercive Use of Organic Therapies, 47 S. Cal. L. Rev. 237 (1974).

Shapiro's article is excellent. A summary could not do it credit. The table of contents gives an insight:

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22. March 14, 1974: The Association for Advancement of Behavior Therapy issued its statement on Behavior Modification.

23. March 27, 1974: The National Prison Project, responding to a request from then A.A.B.T. President Davison for comment on the Statement, sent the following reply:

Letter dated: March 27, 1974

Gerald C. Davison, Ph. D.
Association for the Advancement of Behavior Therapy
305 East 45th Street
New York, New York 10017

Dear Dr. Davison:

We are in receipt of your letter of March 14, 1974, and the Association's Statement on behavior modification dated March 14, 1974.

We understand your concern that behavior-therapy be presented to the public accurately. In fact we have spent a substantial amount of time and energy learning about behavior-modification, its principles and strategies under the guidance of several well known and respected behavioral scientists.

We have considered the Association's Statement with some care and have the following comments. The articles which appeared in the New York Times, to which your Statement refers, reported several formal behavior-modification programs, which were labeled as such by the behavioral psychologists who established them, reviewed them and otherwise participated in their maintainance. Hence, they do not represent "so-called" behavioral modification practices. Rather, they were coercive attempts to apply principles of behavior control to prisoners in an effort to make their conduct conform to standards established ex parte by the prison administration.

One of the programs noted in the Times was the START (Special Treatment and Rehabilitative Training) program run by the Federal Bureau of Prisons. START was evaluated by several behavioral scientists including Harold L. Cohen and Nathan Azrin. Enclosed are their reports. A reading of their respective reports sharply delineates the moral, ethical and legal problems which face your profession. Simply stated, in an institutional setting, who is the client, the institutional person (Cohen's position) or the administration (Azrin's posiiton)? Your statement does not address this problem.

We cannot agree with your statement that behavior therapy cannot be equated with the "use of electric shocks applied to the extremities" or "with the imposition of prolonged isolation." Electric shock has been frequently utilized in behavior therapy. (Whaley and Tough, 1970). In fact, electro-shock devices were on display for sale at your recent convention in Florida.

Isolation, as well, has been utilized. More often than not it is given a more euphemistic title, such as "time-out". Whether such periods are prolonged depend, of course, on the individual(s) involved and the particular program strategy.

We do agree with your Statement that most behavior therapy programs are designed to enhance "self control". However, the issue is what group or organization is defining the term. Behaviorists have demonstrated first, in the laboratory, and later in non-clinical settings, that their learning strategies can result in immediate, profound changes in behavior. The use of such dynamic principles upon institutionalized persons, be they delinquent children, mentally handicapped people or prisoners, has frequently been used without regard for federally protected constitutional rights, as well as the ethics of the psychology profession.

Continuation of letter to Gerald C. Davison.

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In light of our experiences with behavior modification program in prisons and with the professionally trained individuals who administer them, we cannot agree with your Statement that behavior therapy, is marked by a full description of procedures and careful evaluation of effects. Rather, institutional behavior modification programs are consistant in their secrecy, their lack of independent review, and on-going evaluation, and, as noted above, a profound moral and legal confusion over whose interests the programs serve.

It is our contention that behaviorists must not accept requests for assistance that take the form "make him behave." Our experience has demonstrated that some behavioral technicians have, because of their ability to objectify behavior therapy, lost sight of the importance of responding to their subjects as human beings and respecting their rights.

We sincerely appreciate the fact that the Association has a task force formulating guidelines for the proper implementation of behavioral principles in the clinical setting.

We share your concern and are willing to discuss these issues with the Association.

Sincerely,

Arpiar G. Saunders, Jr.,
Staff Attorney

24. April 3, 1974: Reed Martin, Behavior Modification: Human Rights and Legal Responsibilities, a paper presented to the Sixth International Conference on Behavior Modification, Baniff, Alberta, Canada, April 1974.

Reed Martin, an editor of the Research Press, presents and analyzes many of the critical issues, legal as well as ethical, that have been raised concerning the application of behavior principles in non-clinical settings. In addition, Mr. Martin announced the forming of the Project on Law and Behavior, Washington, D.C. whose purpose is to develop a constructive and informative dialogue between the legal profession and practitioners of behavior therapy.

25. April 1974: James G. Holland, Behavior Modification for Prisoners, Patients, and other People as a Prescription for the Planned Society, a paper presented at the meeting of the Eastern Psychological Association held

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in Philadelphia in April 1974. Dr. Holland is with the Department of Psychology, University of Pittsburgh.

Holland addresses four objections made by critics of behavior modification and includes in his response an analysis of the START program and the Patuxent Institution (Jessup, Maryland) "graded tier system." The objections to behavior therapy that are analyzed with considerable insight include:

1. the fear that the use of behavior control would interfere with individual's constitutionally secured rights;

2. the criticism of the possible exploitative aims of behavior control; "Who controls" and "Who controls the controller";

3. the fear that behavior control could limit and stratify individuality; and

4. the question of whether behavioral science can, in fact, solve significant societal problems.

26. April, 1974: Roger Ulrich, Some Moral and Ethical Problems of Behavior Modification - An Inside View, a paper presented at the First Mexican Congress on Behavior Analysis, Xalapa, Veracruz, April 1974. Dr. Ulrich is with the Department of Psychology, Western Michigan University.

Ulrich's paper urges behavior therapists to recognize that behavior modification "does not have all the answers" and cautions that behavior change agents not be "drawn into promoting a system that maintains the conditions for continuing the very ills we were trying to change...[I]f there are any social or political implications which relate to the control of behavior modifiers, they will be related to what behavior modifiers do." (p. 9-10).

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27. May, 1974: Robert Martinson, "What works? Questions and Answers About Prison Reform," The Public Interest, No. 35, Spring 1974.

Martinson made a systematic review of the attempt to rehabilitate offenders with various treatments in various institutional and non-institutional settings. After a careful analysis of approximately 231 different "rehavilitative programs" he concludes, using recidivism as a measure, that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far had no appreciable effect on recidivism."

28. June 6, 1974: A one day workshop meeting was held by the Institute of Ethics, Society and the Life Sciences, in New York City, in an effort to determine the actual number and type of behavior modification programs in operation within adult prisons. In addition, the Institute agreed to consider the possibilty of collecting program descriptions and results to be made available to interested professional individuals and organizations.

29. June 15, 1974: Biennial Conference to the American Civil Liberties Union, University of Wisconsin, Milwaukee, June 1974. Several papers were presented on "How Does Science Threaten Civil Liberties?" including:

A. Davison , Gerald and Stuart, Richard, Behavior Modification and Civil Liberties;

B. Meister, Joel, Modifying Behavior: In Whose Interest.

Gerald Davison and Richard Stuart were President and President-elect, respectively, of the Association for Advancement of Behavior Therapy. Joel Meister is Associate for the Behavioral Sciences, Institute of

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Society, Ethics and the Life Sciences, Hastings-on-Hudson, New York.

Both papers are recommended for their treatment of the subject, andshould be considered for contrast of approach.

30. July 31, 1974: The Court rendered a decision in the START litigation; Clonce v. Richardson, 379 F.Supp. 338 (W.D.Mo. 1974).

The Court found that regardless of the fact that the Bureau of Prisons may view or label a transfer to a behavioral modification program such as START as a "treatment program" for a prisoner's benefit rather than as a sanction or as some form of punishment is not a relevant factor in the determination of the due process question involved. The consideration is whether an involuntary administrative transfer to a behavioral modification program involves a major change in the conditions of the prisoner's confinement. Judge Oliver found that an involuntary transfer to START did involve a major change in the conditions of confinement, in that:

1. Contrary to the rights of prisoners in segregation, START sbujects could not leave the program to attend religious services, and specifically, Muslim prisoners were not provided with any opportunity to consult with spiritual leaders.

2. START prisoners were subject to continuous monitoring of all activities and speech.

3. START prisoners were forced to participate in a behavior modification program to obtain privileges give to prisoners in general population. The Court specifically noted that prisoners in segregation could not lawfully be required to participate in a program in order to regain the privileges of prisoners in open population.

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4. START prisoners were subjected to "procedures specifically designed and implemented to change a man's mind and therefore his behavior."

Because of these changes in the conditions of confinement, changes which, by inference, the Court found violated prisoners's rights guaranteed by the First, Eighth, and Ninth Amendments, the START prisoners were entitled,prior to administrative transfer, to a due process hearing guaranteed by the Fifth Amendment.

Although the Court found that the prisoners' claims that the START program violated their First, Fourth, Eignth and Ninth Amendments were moot because the program had been terminated by the Bureau of Prisons, the Court in finding that the conditions of confinement within the START program were of such a nature to make unlawful the involuntary transfer into the program, had apparently accepted and recognized the prisoners' contentions. In so ruling, the Court rejected the Bureau of Prisons claims that the entire case was moot and that the involuntary transfers of prisoners into START was an act within the discretion of the attorney general and not reviewable by the Court.

The decision noted that he purpose of the program was "not to develop behavior of an individual so that he would be able to conform his behavior to standards of society at large," but rather to make him a better and more manageable prisoner.

31. Summer 1974: Edward M. Opton, Jr., Psychiatric Violence Against Prisoners: When Therapy is Punishment, 45 Miss. L.J. 605 (1974).

Opton forcefully presents the psychiatrists' role as a "compliant accomplice, naive dupe and pressured subordinate" in prison systems' punishment-as-therapy programs waged against prisoners. Opton's article, which contains documented examples of the abuses of therapy within prisons,

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helps to establish his assertion of a "principle that is valid in prisons generally and in prison psychiatry particularly, anything that can be abused will be abused."

32. Summer 1974: National Institute of Mental Health, 5600 Fishers Lane, Rockville, Maryland 20852, has undertaken to produce a brochure for laymen which speaks to a number of core issues of behavior therapy itself and of the legal and ethical issues which it generates. Saleem Shah, Ph.D. is coordinator of this project.

33. Summer 1974: The American Psychological Association has formed a Commission on Behavior Modification with Sidney Bijou as Chairperson. The Commission which had its first meeting in early October, will attempt to formulate policy and guidelines, to be presented to the Board of Directors of the APA, concerning the application of behavior therapy in prisons, mental health institutions, schools and community mental facilities.

34. September 1974: Wayne Sage, "Crime and The Clockwork Lemon." Human Behavior, vol. 3, No. 9 (September 1974) p. 16.

Sage states: "In theory, behavior modification ought to help a prisoner go straight. But in practice, these new techniques all too often seem to turn into fiendish forms of punishment." Sage supports his premise by examining six prison programs. Of those programs examined, with regard to the ones this author has personal knowledge of, the factual accounts are generally accurate. Sage's article should be read in conjunction with Opton's law review article. (See No. 30, supra.)

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35. September 1974: Isreal Goldiamond, "Toward A Consructive Approach to Social Problems: Ethical and Constitutional Issues Raised by Applied Behavior Analysis," Behaviorism, vol. 2, No.1, Spring 1974. Dr. Goldiamond is a professor of Psychology in the Department of Psychiatry and Psychology, University of Chicago.

Equating the Constitutional with the ethical, Goldiamond describes the Constitution as a contract whose breach "can be counter-productive to the patient, to the aims of institutional agents whose incentives are therapeutic, and to the therapeutic aims of society." (p.4) Although the "political assumptions" of total institutions "are diametrically opposed to those underlying the Constitution" (p. 7), Goldiamond proposes that the institutions should be maintained because they can provide what they, society, and those in their custody desire by an alteration of their approach from that of the pathological model (the elimination of distressing repertoires) to that of the constructional model (the construction, reinstatement, and/or transfer of pleasing repertoires).

To substantiate his proposal for the construction of "therapeutic institutions" (p. 46), Goldiamond reviews the development of programmed instruction, his and others' successful operant conditioning programs (aimed at specific behaviors, all highly individualized, and based on voluntary cooperation), the nature of coercion and consent as defined in behavioral terms, and the necessity for rigorous training of those who would speak in the name of behavior modification. Goldiamond concludes that both laboratory and field research will provide answers to issues he suggests in his paper, including the functioning and effect of "the various social systems involved in the various contingency relations whose

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alternatives supply the matrix for behaviors of social concern." (p.72)

36. September 1974: Philip J. Hilts, Behavior Mod, Harper's Magazine Press (1974).

Hilts, a journalist, has written what can be simply described as a critical analysis of what he terms the "behavior mod squad" which is certain to generate strong debate and comment. Chapter 6, which is entitled, "Courtesy of the U.S. Goverment ", while somewhat superficial, is an excellent starting point for a critical assessment of whether behavior modification should be applied within adult prison systems. Hilts' documentation of the "institutionalization" of behavior therapy by those prisons in which it has been attempted, raises questions as to the validity of Dr. Goldiamond's view that the punishment model of prisons can be turned into a positive model. The Milan and McKee experiences in Alabama (RRF 1973) (Milan and McKee 1973, in press) (See No. 10, supra.) are hard facts to overcome.

In addition, Hilts states:

> The third possibility is treatment, fixing the deviants. What information has been developed by the mod squad on this matter shows that whatever fixing goes on in our current system disappears when the prisoner goes home. Fixing the environment within the prison with behavior mod may make a crowd of nice, sociable prisoners. But when they are back in the street, their behavior is controlled by the payoffs of the street, of their friends, their work (if they can get it), and their families. There is not much chance that what behavior you fix in the prison will stay fixed. If you want to fix a criminal's behavior, you have to fix it where it counts. The criminal must be plugged into the right payoffs at home.

Id. p. 121.

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This view is confirmed by the conclusions of Robert Martinson (Martinson, 1974) (See No. 27, supra.).

It is clear that Hilts has effectively raised the issues with regard to behavior therapy within prisons that have simmered and occasionally burst into controversy during the past twenty-two months.

37. September 9, 1974: NBC presented a television drama entitled "Stone in the River" involving a prisoner involuntarily placed into a program applying behavior modification principles in an effort to "reform" his prison behavior. The program operation depicted was very similar to that utilized in START.

38. Fall 1974: Stanley J. Dirks, Aversion Therapy: Its Potential for Use in the Correction Setting (In press, Stanford (California) Law Review, 1974).

This Note concentrates on the question of efficacy and purposely avoids the legal issues posed by the use of aversion therapy within a prison system. Dirks concludes that although aversion therapy has been applied clinically to a wide range of behavior disorders that appear to be similar to criminal behaviors, "clinical research indicates that aversion therapy is likely to fail given the correctional treatment situation, population and post-treatment environment. Correlates of failure include coercion into treatment, low social class, instable employment history, and psychiatric personality. Theoretical evidence also shows the ultimate predominance of cognitive and environment influences over aversion reaction."

39. October 1974: Robert E. Kennedy, Behavior Modification in Prisons: A "Clockwork Orange" or Radical Reform? (to appear in Craighead, W.E. Kazdin,

A.E., and Mahoney, M.J. (Eds.), Behavior Modification: Principles, Issues and Applications. Boston: Houghton - Mifflin, 1976. Mr. Kennedy is a graduate student in psychology at Pennsylvania State University, State College.

Kennedy considers, in depth, the aversion therapy program at the prison hospital at Vacaville, California, the graded tier system of the Patuxent Institution, Jessup, Maryland, the level system of the START program, and the application of behavioral principles to Alabama prisons done by the Rehabilitation Research Foundation. His analysis of these programs and their results is the most thorough this author has yet seen. Kennedy then goes on, using this analysis, to suggest steps for the implementation of the behavior model into the criminal justice system.

40. Fall 1974 - Toward a New Corrections Policy: Two Declarations of Principles, The Group for the Advancement of Corrections and the Statement of the Ex-Prisoners Advisory Group, available from the Academy for Contemporary Problems, 1501 Neil Avenue, Columbus, Ohio 43201.

This document should be read in order to obtain a better understanding of the possible future directions of correctional systems.

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In its initial reconnaissance of the strains on American society, the Academy for Contemporary Problems identified the agonies of the criminal justice system as among the most formidable. Perhaps because the damage was so clearly evident it seemed that the system might well be responsive to plans for change. We were particularly concerned with the condition of those correctional systems in which fundamental changes in ideology were fermenting. We saw an opportunity to contribute to change by helping to define its direction and the means by which it could be accelerated.

It did not take long to find a number of state correctional administrators who entertained the same hopes and alarms. We were able to bring them together in a loose organization which was designated The Group for the Advancement of Corrections. Formally agreeing to work together and with us in November 1972, the Group settled on a program beginning with ideology and then proceeding to specific action. The first product of the Group's work is found in these pages, a new Declaration of Principles which brings together out of examined experience some conclusions about the ends and means of penology.

(The above is from the Forward of the Declaration of Principles).

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PROJECT DESCRIPTION

The National Prison Project is a tax-exempt foundation funded project of the American Civil Liberties Union Foundation which seeks to broaden prisoners' rights, improve overall prison conditions by using existing administrative, legislative and judicial channels and develop alternatives to incarceration.

The current priorities of the project are to improve prisoners' communication with the courts, public officials, lawyers, and the outside world; establishment of fair administrative rules within the prison systems; to abolish physical and psychological cruelty; development of alternative rehabilitative programs and facilities; challenge state and federal parole practices; establish the right of prisoners to associate for lawful purposes.

To do this, it will:

* aid in affirmative litigation such as civil rights class actions -- on behalf of prisoners

* draft model state legislation affecting prisoners' rights and advise legislative bodies seeking guidance and information

* develop model prison regulations

* develop training programs for prisoners in legal research and the use of law libraries

* serve as a clearinghouse for legal papers and other information on prisoners' rights

* prepare model pleadings, briefs and memoranda

* train attorneys and law students in prison litigation

* coordinate activities of other organizations concerned with prisoners' rights and penal reform

* publicize prison conditions, and conduct periodic conferences of key men and women throughout the country who are engaged in prison work.